

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(d). Summary dispositions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JEREMIAH D. CAMPBELL,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12718
Trial Court No. 3PA-16-01538 CR

SUMMARY DISPOSITION

No. 0068 — September 11, 2019

Appeal from the District Court, Third Judicial District, Palmer,
William L. Estelle, Judge.

Appearances: Olena Kalytiak Davis, Attorney at Law, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. Glenn J. Shidner, Assistant District Attorney, Palmer, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Coats, Senior Judge.*

Jeremiah D. Campbell was convicted of violating a domestic violence protective order.¹ The conviction was based on text messages Campbell sent to Michaela

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

¹ AS 11.56.740(a)(1).

Sparks, the mother of Campbell's son, at a time when a domestic violence protective order prohibited Campbell from contacting Sparks either directly or indirectly.

At Campbell's trial, the State sought to introduce evidence of messages Campbell had posted on Facebook, which were identified in the trial court record as exhibits four and five. Campbell objected to the admission of these exhibits on the grounds that the messages could not be properly authenticated, were irrelevant, and were unduly prejudicial. The trial court overruled his objections, and Campbell now appeals.

Campbell's arguments regarding authentication

Alaska Rule of Evidence 901 states the general rule that authentication "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Additionally, subsection (a) of this rule requires that before a prosecutor in a criminal trial offers evidence that is susceptible to tampering or modification, the prosecutor must demonstrate "as a matter of reasonable certainty that the evidence is . . . properly identified and free of . . . possible taints."²

In this case, the prosecutor argued that exhibits four and five were sufficiently authenticated, as both came from the same Facebook account — an account bearing Campbell's name and picture. Additionally, the prosecutor argued that exhibit four could be authenticated through Sparks's testimony that Campbell admitted that he had written the message depicted in the exhibit and posted it on his Facebook page. And the prosecutor argued that there were unique details in exhibit five about events known to Campbell that were sufficient to indicate that Campbell had drafted it. After hearing these arguments, the trial court overruled the defense objections and admitted exhibits four and five.

² Alaska Evid. R. 901(a).

The trial court’s finding that both exhibits were sufficiently authenticated was not an abuse of discretion. The messages were sufficiently linked to Campbell as the author, and a reasonable fact-finder could find that the messages are what the State claimed them to be.³

Campbell’s arguments regarding relevance and prejudice

Alaska Rule of Evidence 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

In a prosecution for a crime involving domestic violence, Alaska Rule of Evidence 404(b)(4) authorizes the admission of evidence of the defendant’s other crimes of domestic violence “to show that the defendant characteristically commits such acts, so that the defendant’s character can be taken as circumstantial evidence that the defendant acted true to character during the episode being litigated.”⁴ The rule

³ See *Buster v. Gale*, 866 P.2d 837, 841-42 (Alaska 1994) (holding that prior testimony indicating authenticity was sufficient to authenticate a copy of an original note); see also *Sublet v. State*, 113 A.3d 695, 713-17 (Md. App. 2015) (noting that some means of authenticating social media posts are through distinctive characteristics and/or direct testimony); *Commonwealth v. Mangel*, 181 A.3d 1154, 1162-63 (Pa. App. 2018) (holding that the authenticity of social media evidence can be established through either direct or circumstantial evidence, such as direct testimony or distinct characteristics); *Tienda v. State*, 358 S.W.3d 633, 642-43 (Tex. Crim. App. 2012) (holding that, absent any evidence to the contrary, postings made from the defendant’s social media account were sufficient to establish a prima facie case that they were made by the defendant).

⁴ *Bingaman v. State*, 76 P.3d 398, 408 (Alaska App. 2003).

incorporates AS 18.66.990's definition of "crime involving domestic violence," which includes the offense of violating a protective order.⁵

In the present case, the trial court found that both exhibits were relevant under Rule 404(b)(4) and that their probative value outweighed any danger of unfair prejudice.

Exhibit four begins with a statement about the author's ability to shoot accurately, and states, "I tell you the only reason you are breathing is because I have not figured out how to get away with it. Just something to think about on your ride to work today don't take the same road twice it Build's a pattern." The court ruled that exhibit four "was designed to communicate with the alleged victim" and that it was admissible under Rule 404(b)(4).

Exhibit five is a lengthy post in which Campbell admitted to and explained his reasons for contacting Sparks after he was served with the protective order. The trial court found that the exhibit "directly name[d] the alleged victim and indicate[d] that [Campbell] authored [the messages] and that he was arrested for that communication[.]" Given this, the court concluded that exhibit five "relate[d] directly to the evidence in the case."

The trial court also found that the probative value of the exhibits outweighed any potential for unfair prejudice.

We have reviewed the record in this case and conclude that the trial court's evidentiary decisions were not an abuse of discretion.

⁵ AS 18.66.990(3)(G); Alaska Evid. R. 404(b)(4).

Conclusion

The judgment of the district court is AFFIRMED.